IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 1241 of 2006

Reserved on : 18th June, 2007

Date of Decision: 20th June, 2007

Executive Engineer, HPSEB

Petitioner

Vs.

Surender Pal and another Respondents

Coram

The Hon'ble **Mr. Justice Sanjay Karol,J.**

Whether approved for reporting[1]?

For the petitioner: Mr. Shrawan Dogra, Advocate.
For respondent No.1: Mr. Vikas Rathore, Advocate.

Sanjay Karol, J.

Shri Surender Pal employee was engaged as daily waged Beldar by the petitioner and worked as such upto 18.7.2000 in certain spells on muster roll basis. On a dispute raised by workman, reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was made by the Government to the H.P. Industrial Tribunal cum Labour Court, Dharamshala (for short, Tribunal).

Respondent No.1 preferred a Claim Petition before the said Tribunal, registered as Reference No. 85 of 2003 (RBT No.320/2004) Surender Pal vs. Executive Engineer, HPSEB and another, inter alia, contending that his services were illegally terminated without compliance

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

of the provisions of the Act and also in violation of H.P.S.E.B. Industrial Establishment Standing Orders framed by virtue of Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to Standing Orders Act). Further persons junior to him have been retained and subsequent to his termination new persons have also been engaged.

In response petitioner filed reply inter alia stating that applicant left the job of his own will. There is no infraction of any provisions of the Act or Standing Orders Act. The claim being barred due to limitation/delay and laches the reference was bound to be dismissed.

The Tribunal answered the said reference by passing the award dated 23.3.2006, titled as Surender Pal vs. Executive Engineer, HPSEB, holding that in view of the fact that no notice as required under the Standing Orders was established to be either issued or served upon the respondent-employee, his disengagement is legally unsustainable. On merits the claim was not held to be stale. Direction was given to the petitioner to re-engage the respondent-employee without any back wages.

Mr.Shrawan Dogra, learned counsel for the petitioner-Board argued that (i) learned Judge could not have travelled beyond the scope of Reference as the same was restricted to violation of provisions of the Act and not the Standing Orders Act (ii) the Tribunal has no jurisdiction to expand the scope of Reference and answer the same, and (iii) the applicability of the provisions of the Standing Orders Act stood exempted with effect from 22.8.1992, therefore, any reliance thereupon is illegal.

He has relied upon M/s Village Papers Pvt. Ltd. vs. The State of Himachal Pradesh and others reported in 1993 (1) Shim. L.C. 1, to support that the Tribunal could not have been travelled beyond the scope of Reference. He has also referred to decisions Sapan Kumar Pandit vs. U.P.State Electricity Board and others reported in (2001) 6 SCC 222,

Nedungadi Bank Ltd vs. K.P.Madhavankutty and others reported in 2000(2) SCC 455 to support his plea of limitation.

I have heard the learned counsel appearing for the respondent-employee. Reliance is placed on the decision of the Supreme Court in between Samishta Dube and City Etawah and another, reported in 1999 (81) FLR 746.

I proceed to decide as under:-

The Standing Orders Act has been enacted with the object of defining, with sufficient precision the conditions of employment and also to make the said conditions known to the workmen employed with the industrial establishment. The Act provides model Standing Orders. However, each of the industrial establishments can have their own Standing Orders, in conformity with the provisions of the Standing Orders Act to be duly certified by the certifying officer. Section 14 empowers the Government, by Notification to be published in the official gazette, to exempt conditionally or unconditionally, any industrial establishment from all or any of the provisions of the Standing Orders Act.

Notification exempting the petitioner-Board from the applicability of all the provisions of the Act is reproduced:-

> "EXEMPTION FROM THE PROVISIONS OF THE ACT
> (Issued and published in Hindi in RHP dated 22.8.92 p. 1180)
> Shimla 2, the 11th September, 1985.
>
> No.12-5/85-Shram.- In exercise of the powers conferred by him under section 14 of the Industrial Employment (Standing Orders) Act, 1946 (Act No. XX 1946), the Governor, Himachal Pradesh is pleased to exempt the establishment of Himachal Pradesh State Electricity Board from all the provisions of the said Act."

From the aforesaid, it is clear that petitioner - H.P. State Electricity Board has been exempted from all of the provisions of the Standing Orders Act with effect from 22.8.1992 i.e. before the disengagement of the services of the employee.

In this view of the matter, the Tribunal wrongly relied upon the provisions of the Standing Orders Act to hold that the disengagement is bad for want of issuance of notice giving 10 clear days to the employee.

With regard to the plea of delay and laches, in my view, the Tribunal has rightly come to the conclusion that there is no inordinate delay in the respondent-employee exercising his statutory right for pursuing his remedies. The termination is of the year 2000 and reference is of the year 2003. The employee had promptly raised the dispute. The matter was pending conciliation. I need not refer to the judgments, which have been cited by Mr.Dogra on this point, suffice it to say that the entire case law on delay and laches has been considered by this Court in Divisional Manager, HPFC and anther vs. Garibu Ram CWP No. 1542 of 2002) decided on 17th April, 2007.

In view of my aforesaid finding, I need not decide the issue of jurisdiction of the Tribunal to enlarge and travel beyond the scope of reference. This question is left open.

During the course of hearing, it was further argued that there is material on record to show that respondent-employee had completed 240 days of service and was in any event entitled for notice under Section 25-F of the Act and that juniors have been retained and new persons have been employed after termination in violation of Section 25-G and 25-H of the Act. According to the learned counsel for the petitioner, it is disputed question, which cannot be gone into by this Court.

Therefore, on this ground as to whether there is violation of any of the provisions of the Act, the matter is remanded back for consideration by the Tribunal.

It would be open for the parties to place on record additional material in support of their claims without unnecessarily delaying the matter. The Tribunal is directed to decide the matter, after affording opportunity of hearing within a period of 16 weeks from today.

Further, it would be open for the respondent – employee to independently take up the matter with the concerned authority who shall, keeping in view the averments made by him in the claim petition, sympathetically consider re-engagement of the respondent-employee in accordance with law. Even though the plea of limitation/ delay and laches has been decided against the petitioner, however, while considering the issue of back wages, it would be open for the Tribunal to consider the same and decide accordingly.

No other point was raised or urged by the learned counsel for the parties.

With the above observations and directions, the writ petition is disposed of. All the Misc. applications are also disposed of.

Records of the case, if any, be sent back immediately and forthwith.

June 20, 2007
(C)

(Sanjay Karol),
Judge